Supreme Court, U.S.
FILED

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IN THE

# SUPREME COURT OF UNITED STATES

OCTOBER TERM 1994

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LUTHER WALLACE KLUMP,

Petitioner,

v.

UNITED STATES OF AMERICA
BRUCE BABBITT SECRETARY
OF INTERIOR

Respondants

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

Pro se
Luther Wallace Klump
Box 316
Bowie, Arizona 85605
602 847-2403

November 17 1994

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22 pp

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THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY THE BASIC INGREDIENT OF LIBERTY AND FREEDOM IS THE PRIVATE OWNERSHIP OF THE LAND OR BUSINESS AT WHICH YOU TOIL OR WORK. THIS IS CALLED "GOOD CAPITALISM". "BAD CAPITALISM" IS PRIVATE OWNERSHIP OF BUSINESS, BUT WORKERS ARE CALLED EMPLOYEES. A DECEPTIVE WORD FOR SLAVES. TYRANNY IS GOVERNMENT OWNERSHIP OF LAND, AND THE PEOPLE WORKING THIS LAND ARE PURE AND SIMPLE SLAVES.

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## JURISDICTIONAL STATEMENT

The Court of Appeals opinion was filed on April 12, 1994. A timely petition for rehearing was filed on April 21,1994. The Court of Appeals denial of Petition of Rehearing was issued August 1, 1994 and is set forth on page 12.

## CONSTITUTIONAL & STATUTORY PROVISIONS

Article IV § 3 C1 2 is set forth on page 4.

Article IV § 2 C1 1 is set forth on page 4.

Article IV § 4 is set forth on page 5

Article I § 8 C1 17 is set forth on page 5.

Amendment 13 is set forth on page 6.

## STATEMENT OF THE CASE

Private property rights have been under attack attack by our government for a long time and is getting worse. Rather than sit by and do nothing and lose my rights and liberty. I recorded a claim to all the lands within my ranch boundry.

MIRANDAAvs. ARIZONA 384US 436 p. 491 "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would aborgate them." Also ADAMS vs. SALT RIVER VALLEY WATER USERS ASSN. 1939 53 Arizona 374 89P. 2d 1060 "..... such right is a vested right and cannot be taken from the owner except by his CONSENT."

MARBURY vs. MADJSON 5 U.S. (2 CRANCH) 137,174 176 (1803 "All laws which are repugnant to the Constitution are null and void."

NORTON vs. SHELBY COUNTY "An unconstitutional act is not law, it confers no rights; it imposes no duties:affords no protection; it creates no protection; it creates no office: it is in legal contemplation, as inoperative as

though it had never been passed."

BLM filed suit to quiet title to these lands. The District Court ruled by Summary Judgement.

There has never been a hearing on this case, not even oral arguments; so there are no transcripts. The only record is a MEMORANDUM from the Ninth Circuit Court in which they quoted the US Constitution Article IV § 3 Cl. 2 "The congress shall have power to dispose of and make all needful rules and regulations repecting the territory or other property belong- to the United States."

This is true, BUT

In 1912, Arizona changed from a territory, into the state of Arizona, and entered the Union on an equal footing with any other state. (Enabling Act). Thus, the US government no longer owns the unappropriated lands of Arizona. Also, US Constitution Article IV § 2 cl 1 "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

Article IV § 4 "The Unted States shall guarantee to every state in this union a republican form of government." People in a republican form of government can choose their own destiny. When governments own the land, the people do as they are told.

Article IV § 3 cl 2 ".....or other property belonging to the United States." Turn to the US Constitution Article 1 §8 cl 17 and we find what belongs to the US Government. An area not exceeding 10 miles square which is Washington D.C. Also, "all places purchased by the consent of the legislature of the state in which the same shall be for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."

In JOHNSON vs. US FEDRAL SUPP # 76 page 538, "Only rights can be claimed by a belligerent claimant in person. It can not be claimed by an attorney or solicitor."

In my land claim of February 8, 1990, I am

only claiming that which is rightfully mine. I am harming nobody. My actions are only promoting Liberty and Freedom.

The 13th Amendment of the US Constitution is also at issue in this case. Graham County, Arizona is 93% government "owned", so people must obey their absolute authority. True, they can go some place else like Nevada. 97% government "owned", or California which is 60% government "owned". I have no choice. My roots are here. Involuntary servitude of the 13th Amendment to the US Constitution "occurs when an individual is coerced into service by improper or wrongful conduct that is intended to cause, and does cause the other person to believe that he or she has no alternative but to perform the labor." BORGAN vs. SAN MATEO COUNTY, 901 F. 2d. 762, 764 (9th Cir. 1990) (quoting UNITED STATES vs. MUSSRY 726 F. 2d 1448, 1453 (9th Cir.), cert., denied. 469 US 855 (1984)).

I Luther Wallace Klump do solemnly swear

that I believe that I have no alternative but to perform the terms and conditions of the BLM Grazing Permit.

REASONS FOR GRANTING WRIT

CERTIORARI SHOULD BE GRANTED BECAUSE NO COURT HAS EVER DEFINED THE BASIC INGREDIENTS OF LIBERTY AND FREEDOM. THIS CASE COULD GIVE AMERICA AND THE WORLD, DIRECTION, LIKE REINVENT GOVERNMENT FOR THE BETTER.

DATED Nov 17Th 1994.

RESPECTFULLY SUBMITTED,

Luther Wallace Klump

LUTHER WALLACE KLUMP

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT COURT

| | | |
|---|---|---|
| LUTHER WALLACE KLUMP<br>Defendant<br><br>vs.<br><br>UNITED STATES OF AMERICA<br>BRUCE BABBITT SECRETARY OF INTERIOR<br><br>Plaintiff | * | CASE NO. 93-16728<br><br><br><br>NOTICE OF APPEAL |

NOTICE IS HEREBY GIVEN that Luther Klump appeals to the United States Supreme Court from the Order of the Ninth Circuit Court of Appeals.

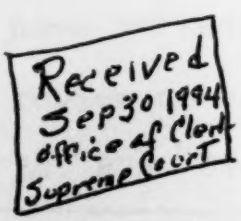
For the United States Department of Interior to own land is an act of tyranny. 28 USC rule 28 (4).

Intering this action on the 23rd day of September 1994.

Dated this 23rd day of Sept 1994.

Luther Wallace Klump

LUTHER WALLACE KLUMP
Box 316
Bowie, Arizona 85605a



Filed
Apr 12 1994
U.S. Court of
Appeals

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

| | | |
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| UNITED STATES OF AMERICA<br>Plaintiff-Appellee, | * | No.93-16728<br>D.C. No. Cv-<br>92-00410-RMB |
| v. | * | |
| WAYNE D. KLUMP,<br>Defendant, | * | |
| and | * | MEMORANDUM* |
| LUTHER WALLACE KLUMP,<br>Defendant_Appellant. | * | |

Appeal from the United States District Court
for the District of Arizona
Richard M. Bilby, Chief Judge, Presiding

Submitted April 5, 1994**

Before: POOLE, BEEZER, and T. G. NELSON Circuit Judges

Luther Wallace Klump appeals pro se the district court's summary judgment for the United States in the government's action to quiet title to approximately 60,000 acres of land in Arizona. We have jurisdiction pursuant to 28U.S.C.§ 1291. We review de novo, see Darring v. Kincheloe, 783 F. 2d. 874, 876 (9th Cir. 1986), and affirm.

* This disposition is not appropriate for publication and may not be cited to or by the

courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34 (a); 9th Cir. R. 34-4.

Klump contends the district court erred because the United States Constitution forbids the federal government from owning land. The power of the federal govenment to own land, however, is set forth in the Property Clause of the Constitution. See U.S. Const. art. IV. § 3, cl. 2 ("[t]he Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States"). Pursuant to the Property Clause, "'Congress exercises the powers both of a proprietor and of a legislature over the public domain'" Nevada v. Watkins, 914 F. 2d. 1545, 1553 (9th Cir 1990) (quoting Kleppe v. New Mexico, 426 U.S. 529, 540 (1976)), cert. denied, 499 U.S. 906 (1991). Thus, Klump's contention lacks merit.

The district court found that the goverment's

evidence established that the land in dispute was public land and that Klump had not offered any evidence to show that the land belongs to him [1]. The district court also found that Klump could not assert title by adverse possession. Klump does not argue on appeal that the district court's findings are wrong, but, rather, maintains that government ownership of land violates the Constitution. As we stated above, the Constitution itself empowers the federal government to own land. Thus, the district court did not err by granting summary judgment for the government [2].

AFFIRMED.

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2/ We do not agree with Klump that 43 U.S.C. § 315, which Klump cites for the first time in his reply brief, supports Klump's argument. Klump's contentions regarding the district court's "cultural maturity" and alleged bias, and the court's decision not to hold a hearing on the government's summary judgment motion also lack merit.

Filed
Aug 1 1994
U.S. Court
of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, Plaintiff-Appellee, | * | No. 93-16728 |
| | * | D.C. No CV-92-00410-RMB |
| v. | * | Arizona (Tucson) |
| WAYNE D. KLUMP, Defendant, | * | |
| and | * | ORDER |
| LUTHER WALLACE KLUMP, Defendant-Appellant. | * | |

Before: POOLE, BEEZER, and T.G. NELSON, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App.,P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

Filed
Aug 6 1993
U.S. District
Court

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff,<br>v.<br>LUTHER KLUMP,<br>Defendant | * | No. CIV 92-410<br>TUC RMB<br>ORDER |

The United States of America (government) brought this action against Wayne and Luther Klump to quiet title on approximately 60,000 acres of land located in Dos Cabezas mountains, approximately 100 miles east of Tucson. The government claims the land in question belongs to it. The Klump brothers recorded "claims" in Cochise and Graham counties stating the land belongs to them.

On June 17, 1993, pursuant to a stipulation between the government and Wayne Klump, the court ordered this action dismissed with prejudice as to Wayen Klump. The government's motion for summary judgment against Luther Klump and his "rebuttal" motion for summary judgment are before the court. Neither party responded to the

other's motion for summary judgment.

## FACTS

Luther Klump filed his claim to the disputed property on February 8, 1990. His claim was based on his assertion that "it is not possible for the government to own land in America." An affidavit of Vernon Saline, Area Manager with the Bureau of Land Management (BLM), indicates that master title plats, which are the official Federal land ownership records, show the land claimed by Klump acturally belongs to the government. The government has maintained records of its ownership of this land since it was acquired from Mexico under the Treaty of Guadalup Hildago. For many years, the government has issued grazing leases and made mining claims on the land. Klump has used his purported claim as authority for deny access to the BLM and the public, to hinder BLM efforts to enforce grazing laws and regulations, and to close public roads.

## ANALYSIS

### Standard for Summary Judgment

On summary judgment, the court views the evidence in light most favorable to the non-moving party and determines whether there is a genuine issue as to any material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d. 202 (1986); Hopkins v. Andaya, 958 F. 2d. 881, 884 (9th Cir. 1992). If there is no genuine issue, the moving party is entitled to judgment as a matter of law.

The party moving for summary judgment has the burden of providing the absence of any genuine issue of material fact. Id., at 256. When this is done, the burden shift to the non-moving party to demonstrate through production of probative evidence that there remains an issue of fact to be tried. Id.

Application to the Facts

Luther Klump has produced no evidence the land at issue belongs to him. His belief that is not possible for the government to own property in America and that the constitution and Homestead Act were intended to put all lands into private ownership does not make it so.

Plats of the land claimed by Klump, which set forth the status of public domain land and mineral titles, were submitted by the government. It has long been accepted that plats approved by the BLM or its predecessor are conclusive and binding upon all persons and the government as to matters relating to the sale and disposition of lands belonging to the government.

Klump cannot claim the property by adverse possession. Generally, one cannot gain title to land of the United States through adverse possession. U.S. v. Pappas, 814 F. 2d. 1342, 1343, n. 3 (9th Cir. 1987). An exception to the general rule is supplied by 48 U.S.C. § 1068 (a). The exception applies, however, only when a claimant and his ancestors or grantors have held government property in peaceful, adverse, possession under claim or color of title for at least twenty years and have made valuable improvements to the land or cultivated part of it. This exception clearly is inapplicable to Klump.

The fact that two years elapsed between the

time that Klump filed his claim and the time the government filed this lawsuit is irrelevant. No title to public lands can be obtained through the government's acquiescence. Id.

CONCLUSION

The court finds that there are no genuine issues as to any material fact and the government is entitled to judgment as a matter of law.

ACCORDINGLY, IT IS ORDERED that:

1. The government's motion for summary judgment, filed June 8, 1993, is GRANTED. Judgment is entered for the government and against Luther Klump.

2. Klump's rebuttal motion for summary judgment, filed June 11, 1993, is DENIED.

3. the United States of America is deemed to be owner of the lands listed in the attached exhibit.

4. Klump shall not allow his cattle to graze on any of the lands listed above without prior authorization from the BLM.

5. Klump shall withdraw his claim to the

lands listed above and shall have this withdrawal recorded by the Recorder of Graham County. A copy of the recorded withdrawal shall be submitted to the court on or before August 13, 1993.

6. Klump shall refain from asserting additional claims to government property.

DATED this 3 day of Aug, 1993.

S/

Richard M. Bilby
United States District Court